Petition

Office - Supreme Court, U.S.
FILED
AUG 27 1981
ALEXANDER L. STEVAS,
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81-424
No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

BUEL MERRITT BROWN

v.

DRILLERS, INC., et al.
R.O.C., INC., PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Counsel for Petitioner:

BORIS F. NAVRATIL
BREAZEALE, SACHSE & WILSON
Post Office Box 3197
Baton Rouge, Louisiana 70821

ORTLIEB PRESS BATON ROUGE

QUESTION PRESENTED

Whether a state court may exercise in personam jurisdication over a non-resident corporate lessor based solely upon the fortuitous and non lessor-instigated location in the state of a piece of the lessor's rental equipment?

PARTIES

PLAINTIFF

Buel Merritt Brown

Charles R. Moore (Attorney of Record)
850 North Boulevard
Baton Rouge, Louisiana 70802

DEFENDANTS

Drillers, Inc.

C. T. Corporation System (Authorized Agent)
1300 Hibernia Building
New Orleans, Louisiana 70139

Employers Casualty Company

Mr. Jesse R. Adams, Jr. (Attorney of Record)
PHELPS, DUNBAR, MARKS, CLAVERIE & SIMS
Hibernia Bank Building
New Orleans, Louisiana 70112

R.O.C., Inc.
300 West Douglas
Wichita, Kansas

Mr. Boris F. Navratil (Attorney of Record)
BREAZEALE, SACHSE & WILSON
7th Floor, Fidelity National Bank Bldg.
Post Office Box 3197
Baton Rouge, Louisiana 70821

Louis Records & Associates, Inc.

Mr. Joseph F. Keogh (Attorney of Record)
Keogh Building
660 Government Street
Baton Rouge, Louisiana 70802

The Ralph M. Parsons Company
Gilbane Building Company
Parsons-Gilbane

Mr. St. Paul Bourgeois (Attorney of Record)
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Lafayette, Louisiana 70501

Millers Mutual Insurance Association of Illinois
Mr. Boris F. Navratil (Attorney of Record)
7th Floor Fidelity National Bank Bldg.
Post Office Box 3197
Baton Rouge, La. 70821

Max Dillard
Mr. Boris F. Navratil (Attorney of Record)
7th Floor Fidelity National Bank Bldg.
Post Office Box 3197
Baton Rouge, La. 70821

Harbor Insurance Company

Mr. Lee Leonard (Attorney of Record)
718 South Buchanan Street
Lafayette, LA 70502

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

BUEL MERRITT BROWN

v.

DRILLERS, INC., et al.
R.O.C., INC., PETITIONER

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner prays for a writ of certiorari to review the judgment of the Supreme Court of Louisiana in this case.

OPINIONS BELOW

The order of the Louisiana Supreme Court (APP. C, *infra.*) compelling the Court of Appeal for the First Circuit, State of Louisiana, to hear petitioner's appeal from the trial court's decision to maintain in personam jurisdiction is reported at 390 So.2d 1346. The opinion of the Court of Appeal for the First Circuit, State of Louisiana, not yet re-

ported, is reproduced in Appendix B. The denial of application for Writ of Certiorari or Review to the Court of Appeal is reproduced in Appendix A.

JURISDICTION

The judgment of the Court of Appeal for the First Circuit, State of Louisiana, was entered on April 13, 1981. The Application for a Writ of Certiorari or Review was timely filed with the Louisiana Supreme Court on May 1, 1981. This application was denied on May 29, 1981. The jurisdiction of this Court to review said denial is invoked under 28 USC 1257(3).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

U. S. CONST. amend. XIV, Sec. 1:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

La. Revised Statutes 13:3201:

> §3201. Personal jurisdiction over nonresidents
>
> A court may exercise personal jurisdiction over a non-resident, who acts directly or by an agent, as to a cause of action arising from the nonresident's
>
> (a) transacting any business in this state;
> (b) contracting to supply services or things in this state;
>
> (c) causing injury or damage by an offense or

quasi offense committed through an act or omission in this state;

(d) Causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;

(e) Having an interest in, using or possessing a real right or immovable property in this state;

(f) Non-support of a child or spouse or a former spouse domiciled in this state to whom an obligation of support is owed and with whom the non-resident formerly resided in this state.

(g) Parentage and support of a child who was conceived by the nonresident while he resided in or was in this state.

STATEMENT OF THE CASE

Petitioner, ROC, Inc., is a Kansas corporation not authorized to do business in Louisiana, not doing business in Louisiana, and having no agent for the service of process in Louisiana. ROC is the owner of a drilling rig which, while located in Texas, was leased by ROC to Drillers, Inc., a Texas corporation. The lease agreement surrendered all control and responsibility for maintenance to Drillers, Inc. Ultimately Drillers moved the rig into Louisiana, where plaintiff Brown was injured while working on it. Petitioner's only contact with Louisiana was the fortuitous location there of a single piece of its rental equipment. Petitioner is claimed amenable to this damage suit in Louisiana on that basis.

Plaintiff had service effected on ROC pursuant to the Louisiana Long-Arm Statute (*La. Rev. Stat.* 13:3201 et seq.). ROC filed an exception to in personam jurisdiction exercised under these provisions, which was overruled by the trial court. (App. E, *infra.*) ROC then applied to the Court of Appeal for the First Circuit, State of Louisiana, for supervisory writs which that court refused to grant on the ground that no irreparable injury would result to the applicant. (App. D, *infra.*) Petitioner ROC then applied to the Supreme Court of Louisiana for writs of mandamus to compel the Court of Appeal to consider its jurisdictional plea. The Louisiana Supreme Court granted the latter application and remanded the case to the Court of Appeal to be ruled upon on the merits. (App. C., *infra.*) After submission of briefs and oral arguments the Court of Appel rendered its decision on April 13, 1981, by which it affirmed the decision of the Trial Court maintaining in personam jurisdiction over ROC. (App. B., *infra.*) The Louisiana Appeals Court distinguished the present case from *World-Wide Volkswagen Corp. vs. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed. 2d 490 (1980) (App. B, *infra* p. B-3), stating that ROC had availed itself of the protection of Louisiana "in entering into a lease permitting its rig, its sole income producing asset, to be placed anywhere, including Louisiana." (App. B, *infra,* p. B-4). It found that Louisiana could exercise jurisdiction over ROC without offending traditional notions of fair play or substantial justice or the due process requirements of the Fourteenth Amendment. (App. B, *infra,* p. B-4).

On May 1, 1981 ROC petitioned the Supreme Court of Louisiana for Writs of Certiorari or Review of the decision of the Court of Appeals. On May 29, 1981 the State Supreme Court denied ROC's petition without assigning written reasons, though 2 of 7 justices dissented. It is this denial, and the resulting exercise of jurisdiction over ROC by the State

of Louisiana, which petitioner (ROC) now seeks to have this Court review.

REASONS FOR GRANTING THE WRIT

The decision of the Louisiana Supreme Court to allow the lower court's exercise of jurisdiction over ROC is in conflict with Federal decisions adjudicating constitutionally permissible extensions of in-personam jurisdiction over non-resident defendants.

The United States Court of Appeals for the Fifth Circuit, in *Standard Fittings Company vs. Sapag*, 625 F.2d 630 (5th Cir., 1980) and *Products Promotions, Inc. vs. Cousteau*, 495 F.2d 483 (5th Cir., 1974), has set forth a two-pronged test which must be met before jurisdiction over a non-resident may be validly exercised by a state court:

> *"First*, there must be some minimum contact with the State which results from an *affirmative act* of the defendant, i.e., *purposeful activity. Secondly*, it must be fair and reasonable to require the defendant to come to the State and defend the action." (Emphasis Added.)

Defining what constituted "purposeful activity," the Fifth Circuit stated in *Products Promotions*, supra:

> ". . . the operative consideration is that the defendant's contacts with the forum were *deliberate, rather than fortuitous*, so that the possible need to invoke the benefits and protections of the forum's laws was reasonably foreseeable, if not foreseen, rather than a surprise." (495 F.2d at p. 496, Emphasis Added.)

The Louisiana appellate court failed to address this issue

in this case. It simply ignored the requirement that before ROC could be subjected to the jurisdiction of a Louisiana court, there would have to be a showing that ROC committed an *affirmative act* to avail itself of the protection of Louisiana laws.

The *Standard Fittings* and *Products Promotions* decisions reflect the pronouncements of this Honorable Court in *Hanson vs. Denkla*, 357 U.S. 235, 78 S.Ct. 1228, 2nd L.Ed. 1283 (1958) and *World-Wide Volkswagen Corp. vs. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed. 2d 490 (1980).

In the *Hanson* case this Court stated:

> "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state. The application of that rule will vary with the quality and nature of the defendant's activity, *but it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its law . . .*" (78 S.Ct. p. 1239, Emphasis Added).

In the *World-Wide Volkswagen* case this Court declared that foreseeable presence of a defendant within a forum state does not equal jurisdiction over that individual or corporation; rather the Court pointed out that the determining factor is a finding that "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being hailed into court there."

The Court went on to say:

> "When a corporation *purposely* avails itself of the privilege of conducting activity within the forum

> state (citations omitted) it is clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance and passing the expected cost on to the consumer, or if the risk were too great, severing its connection with the state." (100 S.Ct. at p. 567, Emphasis Added.)

In the case at bar, the Louisiana First Circuit Court of Appeal — and the Louisiana Supreme Court in denying review — failed to consider the above standards for a valid exercise of in-personam jurisdiction and have permitted in-personam jurisdiction to be maintained over ROC under circumstances much more lax than those mandated by the Fourteenth Amendment to the United States Constitution and the jurisprudence interpreting it. The only basis upon which plaintiff seeks to subject ROC to suit in Louisiana is that it was the owner of the property located there which, he claims, was defective and injured him. However, it was not ROC which placed this property in Louisiana by any activity which could be described as purposeful. Nor did ROC avail itself of the provilege of conducting a business activity with this equipment in Louisiana; such activity was pursued solely by Drillers, Inc. for its own account. Drillers transported the rig to Louisiana after the contract for its lease had been entered into between it and ROC outside Louisiana. The move was beyond ROC's control. It cannot be said that the "purposeful activity" standards set out by the Fifth Circuit Court of Appeals and this Honorable Court have been properly observed by the Louisiana courts in this case. Therefore, the constitutional standards of due process have not been met.

CONCLUSION

The decision of the Court of Appeal for the First Circuit, State of Louisiana, to permit the exercise of jurisdiction over petitioner, ROC, was improper. The decision of the Lou-

isiana Supreme Court to refuse review of the appellate decision was improvident and out of step with requirements for the exercise of jurisdiction established by the Fourteenth Amendment as interpreted by prior federal decisions. In order to stabilize the law in this area for this geographic region, the petition for writ of certiorari should be granted.

By Attorneys,

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Post Office Box 3197
Baton Rouge, Louisiana 70821
(504) 387-4000

Boris F. Navratil

PROOF OF SERVICE

I, Boris F. Navratil, attorney for ROC, Inc., petitioner herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1981, I served the foregoing petition for a writ of certiorari, and its appendices, on Buel Merritt Brown, respondent in connection with this application for a writ of certiorari, by mailing three copies thereof to his counsel of record, Charles R. Moore, Esq., 850 North Boulevard, Baton Rouge, Louisiana 70802.

Boris F. Navratil

APPENDIX A

THE SUPREME COURT
OF THE STATE OF LOUISIANA

BUEL MERRITT BROWN
VS. **No. 81-C-1163**
DRILLERS, INC.

In Re: Roc, Inc., applying for Certiorari, or Writ of Review, to the Court of Appeal First Circuit, Parish of Iberville, Number 13,863.

May 29, 1981

Denied.

JCW

JAD

PFC

JLD

HTL

Marcus, and Blanche, JJ., would grant the writ.

Supreme Court of Louisiana
May 29, 1981

(SIGNED) Frans J. Lablanche, Jr.
Clerk of Court
For the Court

APPENDIX B

BUEL MERRITT BROWN	**STATE OF LOUISIANA**
VERSUS	**COURT OF APPEAL**
	FIRST CIRCUIT
DRILLERS, INC.	**NO. 13,863**

ON WRITS OF MANDAMUS, CERTIORARI AND PROHIBITION TO THE EIGHTEENTH JUDICIAL DISTRICT COURT, PARISH OF IBERVILLE, HONORABLE DANIEL P. KIMBALL, JUDGE

BEFORE: ELLIS, COLE AND WATKINS, JJ.

WATKINS, J. April 13, 1981

This is an action for personal injuries allegedly sustained by plaintiff Buel Merritt Brown while engaged in welding on an oil rig owned by ROC, Inc. and leased by that corporation to Drillers, Inc. Among the various parties sought to be made defendants are Drillers and ROC. Jurisdiction is asserted over ROC, a corporation organized under the laws of Kansas, under Louisiana's "Long Arm Statute", LSA-R.S. 13:3201. ROC filed a declinatory exception to the jurisdiction of the trial court over the person, which was overruled. ROC applied to this court for supervisory writs, which were denied on the ground no irreparable injury had been shown. ROC then applied to the Louisiana Supreme Court for writs, and that Court ordered us to rule on the merits of the writ application. After a thorough review of the merits of the case, we conclude that the trial court had jurisdiction.

ROC contends that Louisiana's Long Arm Statute does not apply to the facts of the present case, or, to the extent it would apply, its application would violate Federal Fourteenth Amendment due process requirements for jurisdiction

over the person as most recently set out in *World-Wide Volkswagen Corp. v. Woodson*, 100 S.Ct. 559 (1980). We find both contentions to be without merit.

ROC had no office in Kansas or Louisiana. It was never qualified to do business in Louisiana. Its major assets aside from stationery and the like consisted of two oil rigs, Rig No. 1, and Rig No. 10. From the time of its incorporation on March 30, 1977, only Rig No. 10 was in operation, and it was leased to Drillers after being leased to another concern until August, 1978. ROC had two stockholders, Max Dillard and Garvey Industries, Inc., each of which owned 50% of the stock. Max Dillard is the principal stockholder in Drillers. The president of ROC, Nelson Van Fleet, learned that Rig No. 10, upon which the plaintiff, Brown, was injured, had been brought to Louisiana by Drillers for drilling purposes in September or October of 1978. The alleged accident occurred in January of 1979 while the rig remained under lease to Drillers.

The Long Arm Statute reads as follows:

"Sec. 3201. Personal jurisdiction over nonresidents

A Court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from the nonresident's:

(a) transacting any business in this state;

(b) contracting to supply services or things in this state;

(c) causing injury or damage by an offense or quasi offense committed through an act or omission in this state;

(d) Causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engag[illegible] in any other per-

sistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;

(e) Having an interest in, using or possessing a real right or immovable property in this state; or

(f) Non-support of a child or spouse or a former spouse domiciled in this state to whom an obligation of support is owed and with whom the non-resident formerly resided in this state.

(g) Parentage and support of a child who was conceived by the nonresident while he resided in or was in this state."

ROC falls under both Subsection (c) and Subsection (d). By an alleged act or omission in this state (ownership of an allegedly defective drilling rig situated in this state) it caused the injury sued upon. It therefore falls under Subsection (c). It also falls under Subsection (d), as it engages in a persistent course of conduct in this state in permitting a leased oil rig to remain here, and furthermore, it derives substantial revenue from the goods (rig) used in this state, as but for the use of the rig in this state for drilling purposes, there would be no lease and no rental payments. The case in favor of jurisdiction under the present facts is far stronger than in two cases cited by plaintiff-appellee, *Boykin v. Lindenkranar*, 252 So.2d 467 (La. App. 4th Cir. 1971) and *Liddell v. Hanover Ins. Co.*, 289 So.2d 299 (La. App. 1st Cir. 1973), in which manufacturers were held subject to the jurisdiction of this state's courts solely on the basis that relatively substantial numbers of their products were used in Louisiana. In neither case did the manufacturer even own the manufactured article in question.

World-Wide Volkswagen, supra, involves a vastly dissimilar factual situation. In that case an Audi automobile making a single trip across Oklahoma was struck in the back

by another automobile and the gas tank burst into flames, burning the owner and her two children. Suit was brought in Oklahoma on the ground that the design of the automobile was defective. The defendants named were inter alia, the retail dealer in New York and the regional distributor of Audi automobiles, whose territory was limited to the states of New York, New Jersey and Connecticut, the basis of the Oklahoma Court's supposed jurisdiction being Oklahoma's long arm statute. These defendants entered special appearances contending the Oklahoma courts were without jurisdiction. The United States Supreme Court reversed a determination by the Oklahoma Supreme Court that the Oklahoma courts had jurisdiction. Basically, an exercise of a state court's jurisdiction does not violate due process requirements if the defendant has certain minimum contacts with that state so that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice' ". *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). The Oklahoma courts were found to be without juirsdiction in the *Volkswagen* case because Oklahoma had only one connection with the stated defendants, the fact that they were responsible for the distribution and sale of the Audi in New York, which was involved in a collision on its single isolated trip through Oklahoma. In the present case, ROC was availing itself of the protection of Louisiana law in entering into a lease permitting its rig, its sole income producing asset, to be placed anywhere, including Louisiana. Although the rig was placed in Louisiana by the lessee, Drillers, ROC had substantial business inter-relations in the form of interlocking ownership with Drillers. Furthermore, ROC continued to own the rig, unlike the dealer and distributor of the Audi in *Volkswagen*. We do not find the application of the Louisiana Long Arm Statute to ROC to offend traditional notions of fair play or substantial justic or Fourteenth Amendment due process requirements.

The interlocutory judgment of the trial court overruling the declinatory exception of lack of personal jurisdiction is affirmed, at appellant's cost, and the case remanded for further proceedings.

AFFIRMED.

APPENDIX C

THE SUPREME COURT OF THE STATE OF LOUISIANA

BUEL MERRITT BROWN

VS. **No. 80-C-2033**

DRILLERS, INC.

In Re: ROC, Inc., applying for writs of mandamus, Parish of Iberville, Number 23,859.

September 26, 1980

Granted. The Court of Appeal is ordered to rule on the merits of the writ application. See Thibodeaux v. King-Wilkinson, Inc., 381 So.2d 1245 (La. 1980), and C.C.P. art. 2083. If irreparable injury shown, relator would be entitled to an appeal.

FAB

JAD

PFC

WFM

JLD

JCW
HTL

Supreme Court of Louisiana

September 26, 1980

(SIGNED) Frans J. Lablanche, Jr.
Clerk of Court
For the Court

APPENDIX D

COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

BUEL MERRITT BROWN

VS. **No. 13,863**

DRILLERS, INC.

In Re ROC, Inc.
applying for writs of Mandamus, Certiorari and Prohibition

Writs refused. There appears to be no irreparable injury as a result of the ruling complained of.

Filed August 27, 1980

(SIGNED) Margaret H. Barr
Deputy Clerk

(SIGNED) Wallace A. Edwards

(SIGNED) Fred Ellis
Judges

Lottinger, J. dissents from the refusal to grant writs.

APPENDIX E

BUEL M. BROWN	NUMBER 23,859, DIVISION A
VERSUS	18th JUDICIAL DISTRICT COURT
	PARISH OF IBERVILLE
DRILLERS, INC.	STATE OF LOUISIANA

JUDGMENT ON EXCEPTION OF LACK OF PERSONAL JURISDICTION AND IMPROPER SERVICE OF CITATION FILED BY R.O.C., INC.

This matter was heard pursuant to notice on June 18, 1980.

PRESENT IN COURT: Charles R. Moore, appearing on behalf of plaintiff
Boris F. Navratil and Murphy J. Foster, III, appearing on behalf of R.O.C., Inc.

After considering the evidence, the deposition of R.O.C., Inc., the pleadings and argument of counsel, and finding the law and evidence to be in favor of plaintiff and against R.O.C., Inc.;

IT IS ORDERED, ADJUDGED AND DECREED that the Exception of Lack of Personal Jurisdiction and Improper Citation is hereby dismissed at defendant R.O.C., Inc.'s costs.

Plaquemine, Louisiana, this 2nd day of July, 1980.

(SIGNED) Daniel P. Kimball
Judge

FILED
July 2, 1980
(SIGNED) Dorothy M. Young
Deputy Clerk

A TRUE COPY
July 2, 1980
(SIGNED) Dorothy M. Young
Deputy Clerk

Opposition

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CLERK

NO. 81-424

In the Supreme Court of the United States

OCTOBER TERM, 1981

BUEL MERRITT BROWN

Respondent

v.

DRILLERS, INC, et al.
R.O.C., INC.

Petitioner

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

RESPONSE TO PETITION

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ARGUMENT IN OPPOSITION TO GRANTING WRIT

On February 9, 1979, Buel Brown (plaintiff-respondent) sustained serious injuries when a one legged handrail on an oil rig owned by ROC, Inc. (petitioner), swung out, causing him to fall.

The accident happened in Iberville Parish, Louisiana.

ROC was named as a defendent and was sued as *owner* and as *lessor* of the drilling rig.

ROC had leased the drilling rig to Drillers, Inc., a Texas corporation, who was operating the rig at the time of the accident.

In addition to several other parties named defendants, Miller's Mutual Insurance Association of Illinois, ROC's liability insurer, and Max Dillard, president of Drillers, Inc., and a member of ROC's board, were added as party defendants. Dillard is the principal stockholder in Drillers, Inc. and owns 50% of the stock in ROC, Inc. Dillard was sued in his capacity as president of Drillers *and as a member of the board of ROC.*

Both Miller's Mutual and Dillard answered plaintiff's suit and did not contest the jurisdiction of the Louisiana court. The suit has been in progress for approximately two years during which time extensive discovery has been undertaken. Further proceedings in the suit are being delayed by this application by ROC.

ROC now argues even though its liability insurer and board member have submitted themselves to the jurisdiction of the Louisiana court, the case against ROC should be dismissed and plaintiff should be required to not only try his case in Louisiana against the insurer and board member, but should also be required to travel to Kansas and *again* try the *same* case in a Kansas court against ROC.

The evidence taken on the hearing on the motion to determine whether Louisiana has jurisdiction consisted of the deposition of G. Nelson Van Fleet, President of ROC. Pertinent undisputed facts taken from that desposition are as follows:

1. ROC is a corporation organized under the laws of the State of Kansas.

2. Fifty percent of the stock of ROC is owned by Garvey Industries, Inc., a Kansas

corporation, and fifty percent is owned by Mr. Max M. Dillard. Mr. Dillard is also the principal stockholder of Drillers, Inc.

3. ROC owns two assets, Drilling Rig No. 1 and Drilling Rig No. 10 (the rig involved in the accident). At the time of the deposition Rig No. 10 was in Louisiana. (Thus the rig had been in Louisiana in excess of one year.)

4. ROC is authorized to do business in Oklahoma and Kansas.

5. Rig No. 10 was in Louisiana on the date of the accident and had been engaged in drilling operations in the State for some time.

6. Since ROC was incorporated its only income producting asset was Rig No. 10.

7. The rig had been leased to Drillers, Inc. since August 20, 1978.

8. ROC derives *all* of its revenue from the leasing of its *only* revenue producing asset, Rig No. 10.

9. Max Dillard sits on the Board of Directors of ROC, Inc., along with James H. Childers and

Nelson Van Fleet. There is no chairman of the board. Nelson Van Fleet is the president of ROC and James Childers is the secretary-treasurer. There is no vice-president. The corporation has no employees.

10. The principal business of ROC is the ownership and leasing of drilling rigs.

11. Rig No. 10 was purchased for $790,000.00. Delivery of the rig was taken by ROC in April, 1978, in Texas.

12. It was understood that the lessee of the rig would drill for oil and gas within the continental United States.

13. The purchase price of Rig No.1 was $125,000.00.

14. ROC has no assets other than the two drilling rigs. It has no office and is not listed in the phone book. It pays no salaries.

15. Rig No. 1 has never been leased and is incapable of being utilized.

The Louisiana District Court, Court of Appeal

corporation, and fifty percent is owned by Mr. Max M. Dillard. Mr. Dillard is also the principal stockholder of Drillers, Inc.

3. ROC owns two assets, Drilling Rig No. 1 and Drilling Rig No. 10 (the rig involved in the accident). At the time of the deposition Rig No. 10 was in Louisiana. (Thus the rig had been in Louisiana in excess of one year.)

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14. ROC has no assets other than the two drilling rigs. It has no office and is not listed in the phone book. It pays no salaries.

15. Rig No. 1 has never been leased and is incapable of being utilized.

The Louisiana District Court, Court of Appeal

and Supreme Court found that the foregoing facts supported the imposition of *in personam* jurisdiction over ROC. The only reported opinion in this regard is the opinion of the First Circuit Court of Appeal which appears as Appendix B in ROC's petition. The Court of Appeal found that under the pertinent Louisiana statutory provisions ROC was subject to the jurisdiction of the court because:

a) "By an alleged act or omission in this state (ownership of an allegedly defective drilling rig situated in this state) it caused the injuries sued upon."

b) "As it engages in a persistent course of conduct in this state in permitting a leased oil rig to remain here, and furthermore, it derives substantial revenue from the goods (rig) used in the state, as but for the use of the rig in the state for drilling purposes, there would be no lease and no rental payments." 401 So.2d at 367

The Court of Appeal further found that:

> "In the present case, ROC was availing itself of the protection of Louisiana law in entering into a lease permitting its rig, its sole income producing asset, to be placed anywhere, including Louisiana. Although the rig was placed in Louisiana by the lessee Drillers, ROC had substantial business intrarelations in the form of interlocking

> ownership with Drillers. Furthermore, ROC continued to own the rig, unlike the dealer and distributor of the Audi in *Volkswagen*. We do not find the application of the Louisiana Longarm Statute to ROC to offend traditional notions of fair play or substantial justice or Fourteenth Amendment due process requirements." 401 So.2d at 368

The foregoing undisputed facts clearly support a finding of jurisdiction under the recent decision of this Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). In *World-Wide* this Court reaffirmed the imposition of jurisdiction where there exists "minimum contacts," i.e. under the circumstances is it fair and reasonable to require the defendant to litigate in another state?; Factors set out to be considered in Worldwide were:

> a) *The forum state's interest in adjudicating the dispute.* Louisiana certainly has a high interest in protecting its citizens from defective drilling rigs brought into the state for substantial use in the state. (*Cf World-wide* where the auto was merely "passing through Oklahoma.")
>
> b) *Plaintiff's interest in obtaining convenient and effective relief.* Certainly it is more convenient for Buel Brown (who was seriously and permanently injured) to litigate his case where the accident was caused by a defective rig instead of transporting himself, his

doctors and numerous witnesses to a distant forum in Kansas. Certainly justice and fairness is better served by permitting plaintiff to bring his case in Louisiana rather than traveling to Kansas merely because ROC, a "shell" corporation is fortuitously incorporated there? Is not ROC's greater contact with Louisiana because at the time of the accident its only revenue producing property (and for all practical purposes the only assets of the corporation) was located in Louisiana and engaged in drilling operations?

c) *The intrastate judicial system's interest in obtainng efficient resolution of controversies.* Judicial efficiency would be served by trying the case in Louisiana. Certainly inefficiency and redundancy would be encouraged if this court orders plaintiff to try his case against ROC's insurer and board member in Louisiana and then retry the same case again in Kansas against ROC.

d) *Shared interest of the several states in furthering fundamental substantive social policies.* Certainly the interest of Kansas in protecting its citizens against defective leased products is the same as Louisiana's interest. 444 U.S. at p. 292.

This Court further noted in *World-wide* that the inquiry focuses on whether "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." This Court further stated:

> "When a corporation purposefully avails itself of the privilege of conducting activities within the forum State, *Hanson v. Denckla*, supra, at 253, 78 S.Ct., at 1240, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence, if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."

The undisputed facts show that ROC could expect to be haled into court in Louisiana and that it deliberately tried to serve the Louisiana market. This is shown by the following:

> a) ROC retained ownership of the drilling rig. From this fact it certainly can be presumed that as owner it received

> the benefit and protection of Louisiana law while the rig was in Louisiana.
>
> b) ROC knew that the rig was in Louisiana. Furthermore, the rig was in Louisiana for over a year.
>
> c) ROC obtained rental payments while the rig was in Louisiana.
>
> d) By leasing the rig for drilling operations in the continental United States, ROC was attempting to serve the Louisiana market. Certainly this is a purposeful activity alleged by petitioner to be absent.

Furthermore, under the terms of the lease ROC, as owner and as lessor maintained contact with the drilling rig while the rig was in Louisiana. The lease provides:

> a) The lessee is required to operate the rig actively in its oil and gas drilling business only and to keep lessor fully informed promptly after execution of the estimated date of commencement and completion of all contracts entered into by lessee during the terms of the lease;
>
> b) The lessee is required to keep the rig fully insured with companies acceptable to lessor;
>
> c) Lessee is required to inform the lessor of any damage to the rig or casualty involving the rig;

d) The lessor is responsible for payment of local or state governmental taxes affecting the drilling rig.

Thus, the case is not like *World-wide* where defendants had no ownership interest in the automobile. Here, not only did ROC own the rig, it exercised a degree of control over the rig under the lease agreement.

CONCLUSION

The fact that the drilling rig was in the State of Louisiana is not an isolated occurrence. In fact, when the rig was in our state for all practical purposes the entire corporation was located here as that rig was its only revenue producing asset. Furthermore, it cannot be seriously argued that by leasing the drilling rigthat ROC was not indirectly serving the Louisiana market

In *World-wide* this court found that only marginal, if any revenues, were received by defendants because of the short period of time in which its automobile passed through Oklahoma. However, in the present case we have shown that *all* of ROC's revenues were derived from the rig's use in Louisiana.

Since *International Shoe Company v. Washington*, 66 S.Ct. 154 (1945) one of the bases for

determining whether a state has jurisdiction is the utilization of notions of fair play and substantial justice. On this issue plaintiff prevails by a mountain of evidence. The accident occured in Louisiana where a majority of the witnesses reside. Plaintiff received medical treatment in this state and certainly the state has an interest as to the well-being of one of its citizens severly injured due to the fault of another. ROC's insurer has been joined as a party defendant under the Louisiana Direct Action Statute and the same law firm represents both interests. The case has been in progress for over two years and to sever ROC from this action would be to require plaintiff to travel to Kansas to prosecute his case for the second time. Certainly by placing a drillng rig into the stream of commerce it should be a cost of ROC's business to defend a suit which arises out of defects in the drilling rig when it still retains ownership and control over that rig and when it was understood that the rig would drill in the continental United States.

We submit that the rulings of the lower courts are correct, constitutional and do justice in this matter.

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PROOF OF SERVICE

I, Charles R. Moore, attorney for Buel Merritt Brown, plaintiff-respondent herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 25th day of November, 1981, I served the foregoing Response to Petition for a Writ of Certiorari on ROC, Inc., relator, by mailing three copies thereof to its counsel of record, Boris F. Navratil, Esq. 7th Floor, Fidelity National Bank Building, Baton Rouge, Louisiana 70801.

Charles R. Moore